

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANTHONY J. BRODZKI,

Plaintiff,

vs.

CITY OF CHICAGO,

Defendant.

Case No. 2:11-cv-01655-PMP-CWH

**FINDINGS AND
RECOMMENDATION**

This matter is before the Court on Plaintiff's Amended Complaint (#4), filed November 2011. The Court also considered the Supplement to the Amended Complaint (#5), filed on January 5, 2012, and an additional Supplement (#16), filed on April 13, 2012.

BACKGROUND

Plaintiff alleges that the Chicago Police Department has been harassing him since 2005 regarding a rape that occurred when he was a child. He also contends that the Chicago Police Department failed to follow legal channels in its surveillance of Plaintiff. On November 3, 2011, the Court granted Plaintiff's Application for Leave to Proceed *in forma pauperis*, (#1) and ordered the Clerk of the Court to file Plaintiff's Complaint. *See* Order #2. The Court further ordered that the complaint be dismissed without prejudice and gave Plaintiff thirty days to amend the complaint to correct the noted deficiencies. The Court will now screen Plaintiff's Amended Complaint.

DISCUSSION

I. Screening the Amended Complaint

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks

1 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
2 Allegations of a *pro se* complaint are held to less stringent standards than formal pleading drafted
3 by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curium). When a court dismisses a
4 complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with
5 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the
6 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106
7 (9th Cir. 1995).

8 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
9 complaint for failure to state a claim upon which relief can be granted. Review under Rule
10 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*
11 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and
12 plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2);
13 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require
14 detailed factual allegations, it demands “more than labels and conclusions” or a “formulaic
15 recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
16 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled
17 factual allegations contained in the complaint, but the same requirement does not apply to legal
18 conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the elements of a cause of action,
19 supported only by conclusory allegations, do not suffice. *Id.* at 678. Secondly, where the claims
20 in the complaint have not crossed the line from plausible to conceivable, the complaint should be
21 dismissed. *Twombly*, 550 U.S. at 570.

22 Additionally, the Court cannot refer to a prior pleading in order to make an amended
23 complaint complete. Local Rule 15-1 requires that an amended complaint be complete in itself
24 without reference to any prior pleading. This is because, as a general rule, an amended complaint
25 supersedes the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once
26 plaintiff files an amended complaint, the original pleading no longer serves any function in this
27 case. Therefore, in an amended complaint, each claim and the involvement of the defendant
28 must be sufficiently alleged.

A. Federal Question Jurisdiction

As a general matter, federal courts are courts of limited jurisdiction and possess only that power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Pursuant to 28 U.S.C. § 1331, federal district courts have original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” “A case ‘arises under’ federal law either where federal law creates the cause of action or ‘where the vindication of a right under state law necessarily turn[s] on some construction of federal law.’” *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8-9 (1983)). The presence or absence of federal-question jurisdiction is governed by the “well-pleaded complaint rule.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under the well-pleaded complaint rule, “federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Id.*

Here, Plaintiff alleges a civil rights violation under 42 U.S.C. § 1983. A claim under this statute invokes the Court’s federal jurisdiction. However, because the Court finds Plaintiff failed to properly bring a claim under section 1983 (see discussion below), federal question jurisdiction does not exist.

B. Diversity Jurisdiction

Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction over civil actions in diversity cases “where the matter in controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of different states.” Plaintiff does not allege diversity jurisdiction in his Amended Complaint or the two Supplements. Additionally, he fails to state the value of the amount in controversy. Moreover, it is unclear whether Plaintiff was a citizen of the state of Nevada when he filed this lawsuit or whether he was a citizen of the state of Texas. As the Court cannot refer to a prior pleading in order to make an amended complaint complete pursuant to Local Rule 15-1, the Court finds that diversity jurisdiction does not exist.

C. Failure to State a Claim

Plaintiff appears to be alleging that Defendants violated his civil rights under 42 U.S.C. §

1 1983. To state a claim under Section 1983, a plaintiff must plead that the named defendant (1)
2 acted “under color of state law” and (2) “deprived the plaintiff of rights secured by the
3 Constitution or federal statutes.” *Gibson v. U.S.*, 781 F.2d 1334, 1338 (9th Cir. 1986); *see also*
4 *West v. Atkins*, 487 U.S. 42, 48 (1988); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th
5 Cir. 2006). Plaintiff’s complaint alleges that police officers violated his rights and names the
6 Chicago Police Department as a defendant. Because a “person” acting under color of state law
7 can include a municipality such as a town, city, or one of its bodies such as the police
8 department, Plaintiff has arguably satisfied the first requirement. *Monell v. Department of Social*
9 *Services of City of New York*, 436 U.S. 658, 663 (1978).

10 However, Section 1983 does not create any substantive rights. Rather, “it simply acts as
11 an instruction for vindicating federal rights conferred elsewhere.” *Marczeski v. Brown*, No. 3:02-
12 CV-894, 2002 WL 31682175, at *2 (D. Conn. Nov. 21, 2002) (citing *Chapman v. Houston*
13 *Welfare Rights Org.*, 441 U.S. 600, 616 (1979)). In its prior Order, the Court instructed Plaintiff
14 to provide sufficient detail regarding what rights Plaintiff is alleging were violated. *See Order*
15 *#2*. After reviewing the Amended Complaint and Supplements, it appears as though Plaintiff is
16 alleging that the Chicago Police Department violated his First, Fourth, Fifth, and Fourteenth
17 Amendment rights. However, Plaintiff again failed to provide adequate facts to properly plead a
18 violation of these rights. Indeed, the facts alleged in Plaintiff’s Amended Complaint and
19 Supplements are difficult to follow and do not cross the line from plausible to conceivable.
20 Plaintiff’s Amended Complaint and Supplements vaguely refer to electronic equipment used to
21 harass him, but do not describe the events that constitute a Fourth Amendment violation.
22 Additionally, Plaintiff appears to allege a false imprisonment claim, but does not state who it was
23 that performed that action or when and where it occurred.

24 Pursuant to 18 U.S.C. § 1915(d), the Court may dismiss “claims whose factual
25 contentions are clearly baseless,” such as “claims describing fantastic or delusional scenarios.”
26 *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). The court finds that Plaintiff’s factual claims
27 describe fantastic and delusional scenarios and do not state a claim upon which relief can be
28

1 granted.¹ Because Plaintiff's Complaint does not set forth a plausible claim, it is recommended
 2 that the Complaint be dismissed with prejudice. Because allegations of other facts would not
 3 cure it, Plaintiff is not entitled to an opportunity to amend the Complaint.

4 Based on the foregoing and good cause appearing therefore,

5 **RECOMMENDATION**

6 **IT IS HEREBY RECOMMENDED** that Plaintiff's Amended Complaint (#4) be
 7 **dismissed with prejudice** because Plaintiff failed to state a claim upon which relief can be
 8 granted.

9 **NOTICE**

10 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must
 11 be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court
 12 has held that the courts of appeal may determine that an appeal has been waived due to the failure
 13 to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This
 14 circuit has also held that (1) failure to file objections within the specified time and (2) failure to
 15 properly address and brief the objectionable issues waives the right to appeal the District Court's
 16 order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
 17 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir.
 18 1983).

19 DATED this 25th day of October, 2012.

20
 21 
 22 **C.W. Hoffman, Jr.**
 23 **United States Magistrate Judge**

24 ¹ Review of court records indicates that Mr. Brodzki has filed multiple lawsuits alleging similar
 25 scenarios that have been rejected. See 2:10-cv-01091-LDG-LRL (dismissed as frivolous); 2:10-cv-2051-
 26 KJD-GWF (dismissed as delusional); 2:11-cv-1489-KJD-PAL (pending objection to Report and
 27 Recommendation dismissing claims as delusional); 2:11-cv-1852-RCJ-PAL (dismissed as delusional),
 28 2:11-cv-1953-PMP-GWF (dismissed as fantastic, delusional, and irrational), 2:11-cv-2075-PMP-PAL
 (dismissed as fantastic and delusional), 3:11-cv-00206 LRH-VPC (dismissed as frivolous), 2:11-cv-
 2101-RCJ-CWH (dismissed as fantastic and delusional).